

## **REMARKS**

In the Notice of Non-Compliance, the Examiner noted that no amendment to claim 56 were submitted in the January 11, 2007 response, although the response asserted that amendments to the claim rendered the §102 rejections of claims 56-65 moot. Claim 56 is amended in this submission. The Examiner also requested that Applicants consider amending claims 31-33 further to expedite prosecution.

Claims 1-22 and 28-69 are pending in the Application. Of the pending claims, claims 1, 28, 37, 50 and 56 are independent claims. In the Office Action of July 12, 2006, claims 1-22 and 31-55 stand rejected under 35 U.S.C. 112 and claims 56-65 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 3,825,762 to White (“White”), claim 34 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over White, claims 35 and 36 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over White in view of U.S. Patent No. 5,233,405 to Wildnauer et al (“Wildnauer”). Furthermore, Claims 1-19, 28, 31-50, 56 and 59 stand rejected under the judicially created doctrine of double patenting.

By this amendment, claims 1, 31, 34, 37, 43, 50 and 56 have been amended. No new matter has been introduced. Claims 1-22 and 28-70 are pending in the application.

### **Double-Patenting Rejections**

Applicants have filed terminal disclaimers and, for convenience, provide copies thereof with this amendment. The new terminal disclaimers were signed by an attorney of record identified in the Power of Attorney filed in the Application on April 15, 2002. Applicants address the Sohma and Wildnauer references below. Consequently, Applicants request withdrawal of the rejections based on double patenting.

### **The §112 Rejections**

In the Office Action of July 12, 2006, claims 1-22 and 31-55 are rejected as being indefinite and incomplete. The Examiner states that neither Specification nor Claims define the axis of the mirror or reflective elements. In view of the claim amendments submitted in this response, Applicants respectfully submit that the §112 rejections are moot. The claim amendments are fully supported in the Specification and Drawings and introduce no new matter to the Application. *See, e.g.*, Figs. 5A and 5B. Therefore, Applicants respectfully request withdrawal of the §112 rejections.

**The Claim Rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a)**

Applicants respectfully submit that presently submitted amendments to the claims render the §102 and §103 rejections moot.

In this response, claim 56 is amended to require that the recited light transfer module comprises first and second reflection surfaces substantially centered on a common axis with the sample, and wherein the transmitting includes redirecting the excitation light received at the first reflection surface onto the sample and wherein the directing the emitted light includes redirecting emitted light received at the second reflection surface onto the second double monochromator.

White does not teach or suggest such a light transfer module.

In view of the claim amendments, Applicants respectfully request withdrawal of the §102 and §103 rejections.

**Claims 31-33 Amendments**

In the Office Action mailed July 12, 2006, claim 34 was rejected under §103 as being unpatentable over White and provisionally rejected under the judicially created doctrine of obviousness in view of Wildnauer. In this response, Applicants have amended claims 31 and 34 to require that an excitation mirror, an emission mirror and an illuminated area be substantially centered along a common axis. Applicants respectfully submit that neither White nor Wildnauer teaches the configuration of mirrors and illuminated areas recited in the claims, claims 31, 34 and their respective dependent claims are allowable.

However, in the Notice of Non-Compliance, the Examiner suggested consideration of additional amendment to claim 31, noting that claim 34 is narrower than claim 31 and that claim 31 should have been rejected along with claim 34. Since the prior art does not teach or suggest the claimed configuration of mirrors and illumination area discussed above, Applicants respectfully submit that further amendment is not required to obtain allowance of the claims.

## CONCLUSION

All objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition of allowance and a Notice to that effect is earnestly solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,  
PILLSBURY WINTHROP SHAW PITTMAN LLP



---

ANTHONY G. SMYTH  
Reg. No. 55,636  
Tel. No. 858 509.4007  
Fax No. 858 509.4010

Date: April 26, 2007  
12255 El Camino Real  
Suite 300  
San Diego, CA 92103-2006  
Telephone: (858) 509-4007  
Customer Number: 27500